Petition

Office-Supreme Court, U.S.
FILED
AUG 14 1981
ALEXANDER L. STEVAS,
CLERK

81-304

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CAMPO SLACKS, INC.,
and
J & E SPORTSWEAR, INC.,

Petitioners

v.

NATIONAL LABOR RELATIONS BOARD
and
AMALGAMATED CLOTHING AND TEXTILE
WORKERS UNION,

Intervenor

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Henry C. Woicik
605 Third Avenue
New York, N.Y. 10158
(212) 972-1100
Counsel for Petitioners

August, 1981

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000 55

THE QUESTIONS PRESENTED

(1) May the Labor Board proscribe, as violations of §8(a)(1) of the Labor Act, certain employer conduct at the bargaining table as undesirable, without regard to the general course of negotiations or to their outcome, and

(2) Whether the Labor Board may use such employer conduct, after agreement has been reached with the union, as the premise for a finding of employer antiunion animus and thus to support Board findings of unlawful conduct unrelated to the negotiations?

TABLE OF CONTENTS

	Page
Opinions and Decisions Below	1
Jurisdiction	2
Statutory Provisions Involved	2
Statement of Facts	4
The Background	4
Negotiations	5
Section 8(a)(1) Employer Conduct in Negotiations	6
Animus	8
Other Employer Violations	8
Reasons for Granting Writ	10
Conflict With Other Decisions	10
Effect Upon Collective Bargaining	13
Argument	15
Conclusion	16
Appendix A — (Order of Court of Appeals)	A-1
Appendix B — (NLRB Decision and Order)	A-5

TABLE OF AUTHORITIES

Cases:	Page
Dow Chemical Co. v. NLRB, 636 F. 2d 1352 (CA3 1980)	9
Korn Industries, Inc. v. NLRB, 389 F. 2d 117 (CA5 1967)	12
Leonard Wholesale Meats, Inc., 136 NLRB No. 103 (1962)	10
Mon River Towing, Inc. v. NLRB, 421 F. 2d 1 (CA3 1969)	11
M. Snower & Co., 85 NLRB 1263 (1949)	7
NLRB v. Frontier Homes Corp., 371 F. 2d 974 (CA8 1967)	12
NLRB v. Garry Manufacturing Co., 630 F. 2d 934 (CA3 1980)	11
NLRB v. Insurance Agents International Union, 361 U.S. 477 (1960)	13, 14
Pittsburgh S.S. Co. v. NLRB, 180 F. 2d 731 (CA6 1950), *aff'd* 340 U.S. 498 (1951)	13
Smyth Manufacturing Co., 247 NLRB No. 104 (1980)	13
Yearbook House, 223 NLRB No. 114 (1976)	13
Youngstown Sheet & Tube Co., 238 NLRB No. 153 (1978)	13

TABLE OF AUTHORITIES—*(Continued)*

Statute:	Page
National Labor Relations Act, 29 USC §151 *et seq.*:	
Section 1, 29 USC §151	13
Section 7, 29 USC §157	2, 7, 11
Section 8(a)(1), 29 USC §158(a)(1)	2, 5, 6, 7, 10, 11, 13
Section 8(a)(5), 29 USC §158(a)(5)	2, 3, 6, 9
Section 8(c), 29 USC §158(c)	4, 11
Section 8(d), 29 USC §158(d)	3
Section 9(a), 29 USC §159(a)	3

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

CAMPO SLACKS, INC.,
and
J & E SPORTSWEAR, INC.,
Petitioners

v.

NATIONAL LABOR RELATIONS BOARD
and
AMALGAMATED CLOTHING AND TEXTILE
WORKERS UNION,
Intervenor

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Petitioners, Campo Slacks, Inc., and J & E Sportswear, Inc., pray that a writ of certiorari issue to review the order of enforcement of the United States Court of Appeals, Third Circuit, made on May 27, 1981.

OPINIONS AND DECISIONS BELOW

The Court of Appeals disposed of this case with a Judgment Order, as yet unreported officially, and which appears at Appendix A, *infra*, at pages A-1 through A-4; the Court issued no opinion. The Decision and Order of

the National Labor Relations Board is reported at 250 NLRB No. 57, and appears at Appendix B, *infra*, pages A-5 through A-51.

JURISDICTION

The Judgment Order of the Court of Appeals was entered on May 27, 1981. See Appendix A, *infra*. This petition for certiorari was filed less than 90 days from that date. Jurisdiction of this Court is based upon 28 USC §1254(1).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, 29 USC §157, provides:

§157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Sections 8(a)(1) and (5) of the Labor Act, 29 USC §§158(a)(1) and (5), provide:

§158. Unfair labor practices

(a) It shall be an unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

* * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 9(a) of the Act, 29 USC §159(a), provides:

§159. Representatives and elections
Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

Section 8(d) of the Act, 29 USC §158(d), in pertinent part provides:

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:

* * *

Section 8(c) of the Act, 29 USC §158(c), provides:

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

STATEMENT OF FACTS

The Background

The Petitioners, Campo Slacks, Inc., and J & E Sportswear, Inc., (the "Employer") are unionized garment manufacturers located in central Pennsylvania; the two corporations, under the same management, are a "joint employer" within the meaning of the Labor Act. (A.13[1]) This Employer's production and maintenance workers for at least 10 years have been represented as separate bargaining units by local affiliates of the charging party in this Labor Board proceeding, the Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, (the "Union"), an international labor organization.[2]

Until 1977 the relationship between the Employer and the ACTWU locals might have been characterized as cordial. (A. 13) At that time, however, and what appears to have precipitated a series of unfair labor practice charges by the international union and Labor Board intervention on its behalf, the Employer abandoned its manufacturing activities in the men's trouser industry,

---

1. "A" references are to the appendix to this petition.

2. Campo Slacks and J & E Sportswear are two of a larger group of affiliated garment manufacturing companies owned and managed by Joseph J. Campolong, Sr., incorporated as separate firms and producing different "lines" within a 30-mile radius in central Pennsylvania. Campo and J & E workers are unionized; the others are not. (A. 14-15)

an industry in the northeast almost totally displaced by imports, and the Employer began manufacturing women's clothing. (A. 16; A. 20-21) This changeover required a good number of accommodations between Employer and Union: the labor contracts covering the two bargaining units were geared to the menswear industry and did not anticipate such a change; the labor contracts provided for piece rates, and new piece rates had to be negotiated on account of the product change; procedures for implementing the changeover also had to be devised and agreed upon because they affected the earnings, seniority rights and working conditions of the bargaining units. (A. 15-17; A. 24-25)

Such changes were to be negotiated between the parties not as parts of labor contract renewals, but as changes to contracts that had some two years to run before expiration. (A. 14)

Negotiations

The Labor Board in this case did not find that the Employer failed to meet any duty to bargain these changed conditions with the Union. The Board did find, however, upon the international union's charges of unfair labor practice, that the Employer committed a number of violations of §8(a)(1) of the Act in the course of such negotiations in which the Union was always represented by at least one and at times two international union business agents. (A. 15-18) These findings of violations of workers' §7 rights arising out of the Employer's dealings and negotiations with international union business agents form the basis in this case for a Labor Board finding of employer antiunion animus and are pivotal to the Board's disposition of a series of other, unrelated unfair labor practice charges filed by the Union against the Employer. (A 28; A.41)

Section 8(a)(1) Employer Conduct in Negotiations

In this case the Labor Board has proscribed the following employer conduct in bargaining as undesirable:

> (i) The Employer told Union officials in a letter to the international union's Pittsburgh offices, and to international union business agents across the bargaining table, that the Employer had decided to close the shop down — permanently, go out of business, because the Union's bargaining posture had been unreasonable. (A. 17; App. to 80-2469 [CA3], p. 328)[3]
>
> (ii) The Employer while bargaining with Union officials told them that "he had no [similar] problems with his non-union shops and suggested that he would prefer dealing with the Teamster's Union or with the International Ladies Garment Workers Union than with the Amalgamated," presumably because those unions were more realistic and reasonable. (A. 17-18)
>
> (iii) The Employer within this context accused the Union of "trying to run him out of business and bankrupt him." (A. 16)[4]

---

3. The ALJ found this to be an unlawful threat of plant closure, "among the most serious forms of coercion, violative of Section 8(a)(1) of the Act." (A.17) The threat was not carried out, however; it appears that the threat had an effect upon the Union's bargaining stance, and the parties reached some sort of accommodation. In any event, there has been no charge in this case, and no finding by the Board, that these negotiations by the Employer were violative of §8(a)(5). In other words, these 8(a)(1) violations were found by the Board without regard to the actual course, or outcome, of the negotiations.

4. The ALJ's Decision attributes this statement to have been made by the Employer to Grace Braniff, a member of the Union's negotiating and grievance handling committees, and a worker, but the record is clear that all of the Employer's statements that were

(iv) The Employer told the Union's negotiators across the bargaining table that the company wanted to substitute a less expensive insurance plan, under the circumstances, for the Union's more costly welfare plan, and that the workers "would have to give it a twirl." (A. 16)[5]

(v) The Employer in these negotiations informed the Union that the company had been losing money; the Board found offensive that the Employer did not furnish to the Union economic data to support this claim, even though the Union did not request such data. (A. 17)

(vi) In his discussions with the Union regarding how the changeover to the production of womenswear was to be implemented, the Employer told the Union that it would have to be done "his way" and not the "Union's way," and that he'd

---

NOTE — *(Continued)*
found to be 8(a)(1) violations were statements made in negotiations or grievance handling and in the presence of the Union's professional contract negotiators:

"JUDGE KLEIN: These conversations you're talking about, the business agents were present?

THE WITNESS: Always.

JUDGE KLEIN: They were always present?

THE WITNESS: Always."

(Testimony of Grace Braniff. App. to 80-2469 [CA3], pp. 200-201)

Under "Board law" employer economic threats made to union officials are apparently privileged, so long as not overheard by workers. See, e.g., *M. Snower & Co.*, 85 NLRB 1263 (1949). The Board's reading of §8(a)(1), then, as a regulation of employer conduct in negotiations tends to make negotiations in which workers participate on the union's side of the table less spontaneous and more contrived.

5. No such substitution was agreed to by the Union, and none was made by the Employer. The Board viewed this statement (and similar statements) made by the Employer to Union officials as a *threat to take unilateral action*, a violation of worker §7 rights.

> rather close the plant down than convert the plant's production in the manner proposed by the Union. (A. 16)

Notwithstanding what appears to have been acrimonious bargaining, the parties successfully negotiated the contract changes the circumstances required. The record contains no indication that the Employer and the Union failed to reach an agreement in such negotiations or that the Employer unilaterally imposed changes in working conditions upon bargaining to impasse either lawfully or unlawfully.

Animus

The Board concluded from this record of Employer conduct in negotiations with international union business agents that

> "Respondent [the Employer] harbored considerable animosity against the Union, which the Campolongs believed was out to bankrupt Respondent," (A. 28)

and that

> "[t]hus, it is clear that Respondent had antiunion animus. . ." *(Id.)*

Other Employer Violations

Such animus has been used by the Labor Board in this case to support other Board findings of unlawful conduct, conduct that is unrelated to the negotiations and conduct that standing alone, without such a finding of animus, might appear to be innocuous. Statements made by an employer not to vulnerable workers within the context of an organizational campaign, but to international union business agents within the context of collective bargaining and across the bargaining table, have in this way been used by the Board as evidence of a general course of employer unfair labor conduct. Such

animus serves to taint all record of employer conduct in this case with an unlawful motivation.

Such additional findings include the following:

(i) In the course of making the changeover from the production of menswear to the production of womenswear the Employer ceased the cutting of garments by four workers employed by one of his unionized shops and performed this work thereafter with workers employed by one of his nonunionized shops. The Board found in this work jurisdiction aspect to the case that this was an unlawful withdrawal of Union recognition. (A. 29-37)

(ii) The Employer ostracized two Union officials after they had on company premises provoked a work stoppage over a dispute involving language in the labor contract, and refused to readmit such officials upon company premises, thus unilaterally cancelling a provision in the labor contract that allows for plant visitation by Union officials. The Board held such an abrogation of visitation rights, and the Employer's refusal to accept communications from these officials, violations of §8(a)(5) of the Act. (A. 37-38)[6]

(iii) The Board also found that the Employer had unlawfully solicited the Union's militant vice president and shop steward to circulate a decertification petition throughout the shop. Such a peti-

6. The Board's findings do not contain any indication that such action by the Employer was in retaliation to the Union officials' involvement in or provocation of a work stoppage over a contract language dispute while on company premises, and despite a no-strike and arbitration clause in the labor contract between the parties. See App. to 80-2469 (CA3), pp. 93-95, 298. Some of the Circuits have held that a union's breach of such a no-strike provision over a contract language dispute justifies an employer's resort to self-help of varying degrees, including unilateral cancellation of the entire labor contract. See, e.g., *Dow Chemical Co. v. NLRB* ("Dow II"), 636 F.2d 1352 (CA3 1980).

tion would have had to be filed some two years later in order to be timely under the Board's contract bar rules (*Leonard Wholesale Meats, Inc.*, 136 NLRB No. 103 [1962]). Additionally, the Board found that the Employer had discriminatorily terminated or placed such steward on layoff out of contract seniority, and had threatened the steward with a loss of unemployment insurance benefits. (A. 18-29) Such findings were in large part based upon the uncorroborated testimony of the shop steward and a tortured interpretation and application of the labor contract's seniority provisions.

Such findings were buttressed by the Board with its finding of antiunion motivation evidenced by Employer 8(a)(1) conduct across the bargaining table.[7]

REASONS FOR GRANTING WRIT

Conflict With Other Decisions

The issue here comes down to whether employer conduct, utterances or economic threats made to the union in the kind of meetings that the Labor Act encourages may be proscribed by the Labor Board as undesir-

---

7. The ALJ in part stated, however:

"So far as appears, the present Respondent had been dealing with the Union for some 7 years without incident before the events here involved. The most recent unfair labor practices alleged in the present case occurred about 2 years ago. Greenaway has been reinstated and the parties apparently resolved their differences in a strike settlement reached around May of 1978. While Respondent did commit serious violations of Section 8(a)(1), (3) and (5), it appears that a large part of the difficulty arose out of a clash of personalities between the Campolongs and the union representatives. Gatto and Reale [the Union representatives] have since been replaced and relations between the parties appear to have improved. The record then does not establish a proclivity on Respondent's part to violate the Act. I conclude that a broad cease-and-desist order is not called for in this case." (A. 43)

able, without regard to the general course of negotiations or their outcome, and treated as violations of the Act. An extension of that issue is whether the statements that are made by an employer during a collective bargaining session and across the bargaining table are privileged or protected under the "free speech amendment" to the Act, §8(c), or whether they may be used by the Board against an employer as the basis for a finding of a general course of unlawful employer conduct, animus.

The Third Circuit in this case has expressly rejected the argument that it is inconsistent with the Act that employers should be inhibited in what they may say to a union while negotiating:

> "Campo Slacks and J & E Sportswear contend that the statements allegedly in violation of §8(a)(1) are protected under §8(c), and permissible because made to union officials in the context of negotiations. We reject these contentions, and find no error in the Board's findings concerning any of the §8(a)(1) unfair labor practices." (A. 3)[8]

The Eighth Circuit in an earlier case rejected this view in a case raising the similar questions:

> "To determine if a statement by a company representative coerces employees in violation of their rights to assist labor organizations and bargain collectively through representatives of their own choosing as guaranteed by this section [§7], the remark must be viewed in the context in which it was delivered. To begin, we agree with the dissent of Board Chairman McCulloch that the finding of a "veiled threat" in [the employer's] story required a

8. See, also, *NLRB v. Garry Manufacturing Co.*, 630 F. 2d 934, 938 (CA3 1980) ("*Gissel* not limited to organizational campaign context," *id.*); and *Mon River Towing, Inc. v. NLRB*, 421 F. 2d 1 (CA3 1969).

> strained interpretation of the remarks. Even so, had these remarks been directed at a group of employees during a unionization campaign, perhaps a fact finding body might have justifiably found them to be coercive. The cases cited by the Board dealt with the organizational phase of the collective process and are not considered in point on the give and take of collective bargaining sessions. These remarks were not made to the unsophisticated employee, but during negotiating sessions in the presence of professional negotiators from the United Steelworkers Union. It is highly unlikely that these seasoned men would be impressed, much less coerced by [the employer's] bland recital. *The Board should have recognized that which might coerce the average worker may have little, if any effect on the Union's team of experienced negotiators during the process of hammering out a collective bargaining agreement.*" (emphasis added, *NLRB v. Frontier Homes Corp.*, 371 F. 2d 974, 977 [CA8 1967])

The Fifth Circuit, of the same mind as the Eighth Circuit, in *Korn Industries, Inc. v. NLRB*, 389 F. 2d 117 (1967) held that the Labor Act was not intended to censor what an employer may say, or how he may say it, in collective bargaining:

> "Under other circumstances the statement might violate the Act. But here, within the context of the bargaining session at which the statement was made, it cannot be considered an independent violation. It was simply a part of the argument that centered on the improper wage plan. The division of one violation of the Act into many violations should not be encouraged. *Nor should the Board, or courts, inhibit discussion at the bargaining table by imposing a penalty upon isolated statements made in the heat of argument.*" (fn. and cits. omitted, emphasis added, *Id.*, at 123)

See also *Pittsburgh S.S. Co. v. NLRB*, 180 F. 2d 731, 735 (CA6 1950), aff'd on other grounds, 340 U.S. 498 (1951).[9]

Effect Upon Collective Bargaining

The national labor policy has opted for collective bargaining as a means to an end.[10] This Court has recognized that collective bargaining is inherently confrontational.

> "It must be realized that collective bargaining, under a system where the Government does not attempt to control the results of negotiations, cannot be equated with an academic collective search for truth — or even what might be thought to be the ideal of one. The parties — even granting the modification of views that may come from a realization of economic interdependence — still proceed from contrary and to an extent antagonistic viewpoints and concepts of self-interest. The system has not reached the ideal of the philosophical notion that perfect understanding among people would lead to perfect agreement among them on values. The

---

9. For a consideration by this Court of the economic coercion that may be employed by a union and workers against an employer within a bargaining context, see *NLRB v. Insurance Agents International Union*, 361 U.S. 477 (1960); compare *Smyth Manufacturing Co.*, 247 NLRB No. 164 (1980), *Youngstown Sheet & Tube Co.*, 238 NLRB No. 153 (1978), and *Yearbook House*, 223 NLRB No. 114 (1976) (employer statements, made in bargaining context, that plant would close if union rejected contract proposals, or that bargaining stance would change if union went on strike, violations of 8[a][1]).

10. The National Labor Relations Act in part provides:

"... It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining ..." (29 USC §151)

> presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized. Abstract logical analysis might find inconsistency between command of the statute to negotiate toward an agreement in good faith and the legitimacy of the use of economic weapons, frequently having the most serious effect upon individual workers and productive enterprises, to induce one party to come to the terms desired by the other. But the truth of the matter is that at the present statutory stage of our national labor relations policy, the two factors — necessity for good faith bargaining between parties, and the availability of economic pressure devices to each to make the other party incline to agree on one's terms — exist side by side." (*NLRB v. Insurance Agents International Union*, 361 U.S. 477, 488-489 [1960])

It would appear that the perpetuation of this view of collective bargaining as an institution requires that either side, employer as well as union, be free to say whatever it wishes, so long as the parties bargain in good faith, and that after agreement is reached their statements made in negotiations should not be permitted to be held against them by the Board when judging unrelated matters. The opposite is a recurring chilling of communication.

ARGUMENT

This case and other Labor Board cases that turn on the Board's policy, that the Board may proscribe certain *employer* conduct at the bargaining table, without regard to the general course of negotiations, acts as an inhibition on the process. The Circuit Courts, to the extent that this policy has been considered by them, have had mixed and in some cases ambivalent views regarding this policy. This case is worthy of review, because collective bargaining, a process in which the national policy has a considerable investment, deserves nurturing as an arena for the free exchange of ideas and where spontaneity is privileged. Stripping away the artificialities promoted by inhibiting fears of subsequent Government intervention of this sort endows the process with public respect, as opposed to the cynicism that contrived processes deserve.[11]

---

11. Before this Court petitioners seek to raise on appeal only the questions (1) whether the Labor Board may proscribe certain employer conduct in negotiations as undesirable, without regard to the general course of such negotiations or their outcome, and (2) whether such employer conduct at the bargaining table may be used by the Board as the premise for a finding of employer antiunion motivation, animus. Should this Court grant review and answer these questions with a "no," petitioners would move the Court to remand to the Circuit Court for its review of the record and the evidence relative to the ULP's unrelated to bargaining in the light that the Board was not justified to make that finding of animus.

CONCLUSION

The petition should be granted.

Respectfully submitted,
HENRY C. WOICIK
Counsel for Petitioners
605 Third Avenue
New York, N. Y. 10158

August, 1981

EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 80-2469

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

CAMPO SLACKS, INC., and J & E SPORTSWEAR, INC.,
Respondents

AMALGAMATED CLOTHING & TEXTILE WORKERS UNION,
Intervenor

(NLRB No. 6-CA-10905)

On Application for Enforcement of an Order
of The National Labor Relations Board

Argued May 21, 1981
Before: GIBBONS, HUNTER and GARTH,
Circuit Judges

W. CHRISTIAN SCHUMANN,
PENNY PILZER
National Labor Relations Board
Washington, D.C. 20570

William A. Lubbers,
General Counsel
John E. Higgins, Jr.
Deputy General Counsel
Robert E. Allen,
Acting Associate General Counsel
Elliott Moore,
Deputy Associate General Counsel
National Labor Relations Board

Attorneys for Petitioner

ARTHUR M. GOLDBERG,
General Counsel
Amalgamated Clothing & Textile
Workers Union, AFL-CIO
15 Union Square
New York, New York 10003

LEONARD SCHNEIDER, ESQUIRE
Amalgamated Clothing & Textile
Workers Union, AFL-CIO
1550 Howard Street
Detroit, Michigan 48216

JEROME L. MARKOVITZ, ESQUIRE
1315 Walnut Street
Suite 1032
Philadelphia, Pennsylvania 19107

Attorneys for Amalgamated Clothing & Textile
Workers Union, AFL-CIO-CLC

HENRY C. WOICIK, ESQUIRE
49 East 96th Street
New York, New York 10028

Attorney for Campo Slacks, Inc. and
J & E Sportswear, Inc.

JUDGMENT ORDER

The National Labor Relations Board, together with intervenor Amalgamated Clothing & Textile Workers Union, petition for enforcement of the Board's order directing Campo Slacks, Inc. and J & E Sportswear, Inc. to cease and desist certain practices in violation of §§8(a)(1), (3), and (5) of the National Labor Relations Act, and to reinstate and make whole discharged employee Marie Greenaway, and to compensate for delinquent contributions to insurance and health funds. Campo Slacks and J & E Sportswear contend that the statements allegedly in violation of §8(a)(1) are protected under §8(c), and permissible because made to union officials in the context of negotiations. We reject these contentions, and find no error in the Board's findings concerning any of the §8(a)(1) unfair labor practices.

Campo Slacks and J & E Sportswear further argue that Marie Greenway was discharged on the basis of her lack of seniority. We find no error in the Board's determination that she was discharged because of anti-union animus.

Finally, we find no error in the Board's finding that Campo Slacks and J & E Sportswear refused Union representatives access to the plants in derogation of the collective bargaining agreement, withdrew union recognition with respect to certain employees, and refused to accept communications from the Union concerning the processing of grievances pursuant to the grievance provisions of the contract.

It is ORDERED and ADJUDGED that the order of the National Labor Relations Board of July 7, 1980 be and is

hereby enforced in all respects. Costs are taxed against respondents.

BY THE COURT,

_____

Circuit Judge

Attest

DATED: May 27, 1981 _____

Sally Mrvos, Clerk

EXHIBIT B

FPT

250 NLRB No. 57

D—6572
Clearfield, Houtzdale,
and Madera, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAMPO SLACKS, INC. AND
J & E SPORTSWEAR, INC.

and Case 6—CA—10905

AMALGAMATED CLOTHING AND
TEXTILE WORKERS UNION,
AFL—CIO—CLC

DECISION AND ORDER

On March 13, 1980, Administrative Law Judge Josephine H. Klein issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General counsel filed a brief in opposition to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has de-

cided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt her recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the

---

[1]Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear presponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd, 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

[2]The Administrative Law Judge ordered Respondents to make employees of the cutting department in Madera, Pennsylvania, whole "by paying all insurance and similar contributions as required by the Campo Slacks, Inc., bargaining agreement. . . .to [the] extent that such contributions have not been made or that the employees have not otherwise been made whole for their ensuing experiences. . . ." To the extent that employees may have paid to third-party insurance companies money for medical or dental coverage or employees may have paid directly to health care providers for medical or dental services that the contractual policies would have covered, we shall order Respondents to make said employees whole, and modify the Order accordingly. See *The Saloon, Inc.*, 247 NLRB No. 156 (1980); *Ferro Mechanical Corp.*, 249 NLRB No. 83 (1980).

[3]Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question whether Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses.

Administrative Law Judge, as modified below, and hereby orders that the Respondents, Campo Slacks, Inc., Houtzdale and Madera, Pennsylvania, and J & E Sportswear, Inc., Clearfield, Pennsylvania, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(g):

"(g) Make whole the employees of the cutting department in Madera, Pennsylvania, by paying all insurance and similar contributions as required by the Campo Slacks, Inc., bargaining agreement that expired on September 2, 1979, to the extent that such contributions have not been made or that the employees have not otherwise been made whole for their ensuing expenses; provided that Respondent is not required to rescind or cancel any substitute or new insurance program or plan it may have instituted, unless the Union so requests. This make-whole requirement shall include reimbursing employees for any medical or dental bills they themselves may have paid directly to health care providers that the contractual policies would have covered, as well as any premiums that they may have paid to third-party insurance companies to continue medical and dental coverage in the absence of Respondents' required contributions."

2. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C. July 7, 1980

_____

John H. Fanning, Chairman

_____

John A. Penello, Member

_____

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten to close any plant or facility because our employees engage in union activities or continue to choose to continue being represented by Amalgamated Clothing and Textile Workers Union, AFL—CIO—CLC.

WE WILL NOT threaten that we will refuse to recognize Amalgamated Clothing and Textile Workers Union, AFL—CIO—CLC, or take unilateral action concerning wages, hours, or other terms and conditions of employment without bargaining with the Union named above.

WE WILL NOT threaten employees with loss of unemployment compensation if they continue to support the above-named Union or engage in union activities.

WE WILL NOT solicit any employees to initiate or sponsor a decertification petition aimed at removing the Union as collective-bargaining agent of our employees in the following appropriate bargaining units:

> All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees at our Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards professional employees and supervisors as defined in the Act:

and

All employees employed by J & E Sportswear, Inc., at our Clearfield, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive collective-bargaining representative of the employees in the bargaining units described above.

WE WILL comply with requests for information needed by the Union in order fully and properly to protect and further the interests of the employees in the bargaining units described above and to negotiate and thereafter administer and enforce collective-bargaining agreements on behalf of the employees.

WE WILL make whole our employees in the cutting department in Madera, Pennsylvania, by paying all insurance and similar contributions as required by the Campo Slacks, Inc., bargaining agreement that expired on September 2, 1979, to the extent that such contribution have not been made or that the employees have not otherwise been made whole for their ensuing expenses; provided that we are not required to rescind or cancel any substitute or new insurance program or plan we may have instituted, unless the Union so requests. This make-whole requirement shall include reimbursing employees for any medical or dental bills they themselves may have paid directly to health care providers that the contractual policies would have covered, as well as any premiums that they have paid to third-party insurance companies to continue medical and dental coverage in the absence of Respondents' required contributions.

WE WILL offer Marie Greenway full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority and other rights and privileges; and WE WILL compensate Marie Greenway for any loss she has suffered because of her discharge or layoff on January 3, 1978, with interest.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of Amalgamated Clothing and Textile Workers Union, AFL—CIO—CLC, or any other labor organization, except to the extent that such right may be affected by an agreement requiring union membership, as authorized by the proviso in Section 8(a)(3) of the Act.

CAMPO SLACKS, INC.
(Employer)

Dated_____ By _____
(Representative) (Title)

J & E SPORTSWEAR, INC.
(Employer)

Dated_____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Porter Building, 10th Floor, 601 Grant Street, Pittsburgh, Pennsylvania 15219, Telephone 412-644-2969.

JD-135-80
Clearfield, Houtzdale
and Madera, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CAMPO SLACKS, INC. AND
J & E SPORTSWEAR, INC.

and Case No. 6-CA-10905

AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC

Rexford C. Simpson, Esq., Pittsburgh, PA, *for the General Counsel.*
Henry C. Woicik, Esq. (Portnoy & Messinger), Jericho, NY, *for the Respondent.*
Mr. Robert Bach, New York, NY, *for the Charging Party.*

DECISION

JOSEPHINE H. KLEIN, Administrative Law Judge: Pursuant to a charge filed on January 30, 1978 and served on Respondent on February 22, 1978,[1] by Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC (the Union), a complaint was issued and served on April 28, 1978, against Campo Slacks, Inc., and J & E Sportswear (hereafter referred to as Campo and/or J & E, or collectively as Respondent), alleging that in the latter part of 1977 and the early months of 1978, Respondent engaged in various acts of interference, restraint and coercion of employees, in violation of

[1]Amended charges were filed on March 16, 1978 (served on April 3, 1978) and April 27, 1978.

Section 8(a)(1) of the Act;[2] on or about January 3, 1978, it laid off employee Marie Greenaway in violation of Section 8(a)(3) and (1) of the Act; and since November 1977 it has refused to recognize and bargain with the Union in specified manners, in violation of Section 8(a)(5) and (1) of the Act. In its answer, filed on May 9, 1978, and amended on September 7, 1979,[3] Respondent admits some of the allegations of the complaint, denies others, and asserts affirmative defenses, as specifically discussed below where pertinent.

Upon due notice, a trial was held before me on September 17 and 18, 1979, in Clearfield, Pennsylvania. All parties were represented and were provided full opportunity to present written and oral evidence and argument, and to examine and cross-examine witnesses. At the conclusion of the hearing, the parties waived oral argument. A post-trial brief has been filed on behalf of the General Counsel.[4]

Upon the basis of the whole record, as well as careful observation of the witnesses and consideration of the General Counsel's brief, I make the following:

---

[2]National Labor Relations Act, as amended, 29 U.S.C. Sec. 150 *et seq.*

[3]The hearing was originally scheduled for Septem 19, 1978. However, it was postponed at the request of the Union because of settlement negotiations. On January 15, 1979, the hearing was indefinitely postponed on the Union's statement that a settlement agreement had been reached. However, for reasons not shown in the record, the matter was rescheduled for hearing by an order issued on July 20, 1979.

[4]Although Respondent's counsel stated that he would file a brief, no such brief has been received. To the extent possible, Respondent's position has been gleaned from its original and amended answers to the complaint, counsel's opening statement and oral motion to dismiss, and counsel's examination of witnesses.

Findings of Fact

I. Preliminary Findings

A. Respondent Campo, a Pennsylvania corporation with facilities located in Houtzdale and Madera,[5] Pennsylvania, is engaged in the manufacture and nonretail sale of clothing. During the year preceding the issuance of the complaint, Campo sold and shipped goods and materials valued in excess of $50,000 from its Pennsylvania facilities directly to points outside Pennsylvania. During the same period, Campo purchased goods and materials valued in excess of $50,000 directly from points outside Pennsylvania for use at its Pennsylvania facilities.

Respondent J & E, a Pennsylvania corporation with a facility located, in Clearfield, Pennsylvania, is engaged in the manufacture and nonretail sale of clothing. During the year preceding the issuance of the complaint, J & E sold and shipped goods and materials valued in excess of $50,000 from its Pennsylvania facility directly to points outside Pennsylvania. During the same period, J & E purchased goods and materials valued in excess of $50,000 directly from points outside Pennsylvania for use at its Pennsylvania facility.

The complaint alleges and the answer admits that at all times material herein, Campo and J & E have been affiliated business enterprises with common ownership and control of labor relations policies and constitute a single business enterprise and/or are joint employers.

Respondent are now, and were at all times material herein, employers (or an employer) engaged in com-

---

[5]This finding is based on an express admission in Respondent's answer to the complaint. However, as discussed below, in the course of the hearing Respondent's counsel apparently contended that Campo had no employees in Madera.

merce within the meaning of Section 2(2), (6) and (7) of the Act.

B. The Union is now, and was at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Background

Campo and J & E are two of a larger group of affiliated companies basically constituting one enterprise owned and managed by Joseph J. Campolong, Sr.[6] Joseph J. Campolong, Jr., is vice president of both Campo and J & E and plant manager of Campo.

Since around 1969 or 1970, the Union has represented employees of Campo and J & E, Local No. 727A representing Campo employees and Local No. 727B representing J & E employees. There have been separate but identical collective-bargaining agreements for the two companies. The latest contracts, as extended, expired on September 2, 1979, after unsuccessful negotiations for a renewal contract.

The Campo bargaining agreement defines the bargaining unit as "all of the employees of the Employer wherever employed," with the usual exclusions. When the agreement was executed, Campo had around 70 em-

---

[6]The record does not disclose precisely the number of separate entities or the extent of Campolong's ownership. However, the existence of a third company, named JBC of Madera, Inc. (hereinafter called JBC), is shown. Campolong apparently maintains his principal office and facilities in Madera used by JBC. JBC appears to be the parent corporation, with Campo and J & E as subsidiaries. It also appears that wages, at least those of Campo's employees, are paid by checks drawn in the name of JBC, which files W-2 forms as the employer.

ployees, principally sewing machine operators, in Houtzdale, and 4 or 5 cutters[7] in Madera. J & E had around 40 to 50 employees in Clearfield. At the same time, JBC had about 70 or 80 production employees working in a building across the road from the cutters in Madera. At an unspecified date in November 1977, the JBC employees were moved across the road into the same building with the cutters. JBC employees were not represented by any union.

At the trial, Respondent's counsel maintained that when the JBC employees moved into the building occupied by the Campo cutters, somehow the definition of the bargaining unit contained in the Campo agreement became improper and the cutters were thereupon excluded from the Campo bargaining unit.[8]

B. Section 8(a)(1)

In the fall of 1977 Respondent was delinquent in insurance payments provided in the Campo collective-bargaining agreement. Campolong resisted the Union's demands. Greenaway credibly testified that Campolong Jr. told her "that his dad was going to like close the plant over the hassle from the girls over the insurance."

Marion Grace Braniff, union persident and chairlady, testified that in 1977 Campolong complained that Nickolas Reale, a representative of the Union's national

---

[7]The word "cutter" is used to include "spreaders," who are in the cutting department.

[8]Respondent's original answer to the complaint had admitted the appropriateness of the contractually defined bargaining unit. However, new counsel later amended the answer to deny "that cutting department employees employed at Madera, Pennsylvania, constitute part of any appropriate unit." Trial counsel opined that Respondent's original counsel did not understand "the import of that admission."

office, was demanding a wage increase of 25 cents per hour, while Campolong would pay only 15 cents. Braniff testified that, in the course of his complaints, Campolong said that the employees were "trying to run him out of business and bankrupt him." She further testified that at that time Campolong Jr., referring to the requested wage increase, said that if the employees did not "give it a twirl," operating on Respondent's terms, Campolong Sr. would "close the plant down." Braniff further testified that, in talking with the six union officers concerning Respondent's substituting an Aetna insurance program for the program provided in the collective-bargaining agreement, Campolong Sr. said the employees "would have to give it a twirl" or he "would close the plant down." Although Braniff's testimony is not entirely clear, it appears that Campolong stated the same position concerning the method of converting the plant's production from men's wear to ladies' wear, which conversion was made, at least in part, in 1977 and early 1978.

Campolong Jr., Respondent's only witness, did not deny or contradict Braniff's testimony. Thus, it stands uncontradicted and is credited in substance. However, Braniff was confused as to dates. After considerable questioning by counsel for the General Counsel, she said she "imagined" that the wage dispute occurred "more around February and March" 1977. But other evidence establishes that it undoubtedly occurred early in September 1977. Braniff testified that "there was one time Nick Reale and [she] . . . wanted a rate on ladies' operation." Reale testified that in connection with a wage increase due in September 1977, the parties disagreed as to whether it should be computed on an hourly-rate or a piece-work basis. Also, according to Reale, Campolong wanted to compute the increase from a base of $3 per hour, whereas Reale maintained that $3 was not the existing average wage in the shop. When no agreement

was reached in a meeting on September 6, Campolong presented Reale a letter, already prepared, reading, in part:

> . . . For the past twelve months, Campo has suffered great losses. Now your demands for pension contributions, and increased hourly rates that will increase our losses. Competition will not allow us these increases. It is the decision of the Board of Directors of Campo that thirty days from this date that Campo will cease doing business.

So far as appears, Respondent never offered to provide economic data in support of Campolong's claim that Respondent had suffered losses. And no such evidence was forthcoming at that present trial. Nor does it appear that Campo ceased operating in accordance with the letter.

On the basis of General Counsel the uncontradicted evidence, I find that, to discourage support of the Union and to avoid having to deal with it, Respondent threatened plant closure. It has long been recognized that such threats are among the most serious forms of coercion, violative of Section 8(a) (1) of the Act. See e.g., *Hanover House Industries, Inc.*, 233 NLRB 164 (1977); *Guardian Ambulance Service*, 228 NLRB 1127, 1128, 1132 (1977). Cf. *Ste-Mel Signs, Inc.*, 246 NLRB No. 177, slip op. p. 3 (1979); *Donn Products, Inc.*, v. *N.L.R.B.*, F.2d, 103 LRRM 2338, 2341 (C.A. 6, 1980)

Greenaway testified that in the fall of 1977 Campolong Jr. told her that "his dad would do what he wanted to about the union, whether the union liked it or not." The complaint alleges that such statement constituted an unlawful threat to take unilateral action in derogation of Respondent's obligation to bargain with the Union. The statement must be appraised in the light of the surrounding circumstances. Among such circumstances are statements made to union representatives at about the same time. Business agent Gatto testified that

Campolong Sr. stated that "he had no problems with" his nonunion shops and suggested that he would prefer dealing with the Teamsters' Union or with the International Ladies Garment Workers Union rather than the Amalgamated. And, as previously found, at about the same time the Campolongs were threatening to close the Campo plant if the employees refused to accept Respondent's unilaterally imposed terms of employment. Considering all the evidence, I find that, as alleged, Respondent threatened to take unlawful unilateral action.

The complaint also alleges that Respondent unlawfully threatened to deprive employees of unemployment compensation if they engaged in union activities. That allegation is supported by Greenaway's testimony concerning her discharge or "permanent layoff" on January 3, 1978. She testified that about 2 weeks after the "layoff" she inquired of Campolong Jr. concerning her entitlement to unemployment compensation. He replied that if she "didn't give him a hassle he would let [her] sign up" for unemployment compensation. Although Campolong Jr. testified thereafter, he neither denied Greenaway's testimony nor sought to clarify or explain what sort of "hassle" by Greenaway he might have feared or anticipated.

At the trial, in moving to dismiss the complaint at the close of the General Counsel's case, Repondent's counsel argued that Greenaway's testimony did not connect Campolong's reference to a "hassle" to any union activity. But, as the General Counsel observes, there is no suggestion of what "hassle" Campolong might have anticipated other than union or other concerted activity. Greenaway was apparently the only union officer then working for Respondent. She had been actively pursuing grievances. On the very day of the "layoff" she had called on the Union for assistance because the plant was unheated and very cold. In the absence of any explanation or clarification by Respondent, one can reasonably

infer that Campolong was threatening to oppose Greenaway's receipt of unemployment compensation if she invoked the contractual grievance procedure in regard to her "layoff" and/or if she continued her activities as a union officer and acting chairlady.[9] The threat obviously violated Section 8(a)(1) of the Act.

The final independent violation of Section 8(a)(1) alleged in the complaint is Respondent's solicitation of a decertification petition. In this connection Greenaway testified that in the summer of 1977 Campolong Jr. "asked [her] if [she] knew how to get the union out of the factory." When she replied in the negative, "he proceeded to tell [her] you'd get a petition and get half the girls to sign the petition and the union would no longer be there." Greenaway then testified that Campolong Jr. asked her to start such a petition.

Again, Campolong was not examined concerning this matter and therefore Greenaway's testimony stands undisputed and is credited. In cross-examining Greenaway, Respondent's counsel attempted, unsuccessfully, to elicit an opinion that Campolong had been joking when he suggested her initiating a decertification petition. Obviously counsel's suggestion is not testimony and cannot support a finding.[10] There is nothing in the record to suggest that the Campolongs found anything related to the Union to be a source of or occasion for humor. The evidence establishes that, at about the time Campolong spoke to Greenaway about decertification, he was having trouble with the union about insurance

---

[9]As discussed below, in February and March 1978, Respondent refused to accept mail from the Union, including a grievance on behalf of Greenaway.

[10]It is perhaps necessary to add that, while counsel's suggestions in leading questions are no substitute for testimony, admissions by counsel are binding on his client.

and expressed Respondent's desire to "get rid of" Gattgo and Reale, the Union's business agent and national representative, who were then servicing the collective-bargaining agreement. Manifestly, nothing would please Respondent more than decertification of the Union.

On all the evidence, I find and conclude that, as alleged in the complaint, Respondent violated Section 8(a)(1) by threatening plant closure if the employees continued their support of the Union; by threatening to deprive Greenaway of unemployment compensation benefits if she continued to exercise her rights under Section 7 of the Act; by threatening to take action unilaterally in derogation of its duty to recognize and bargain with the Union as the duly authorized representative of its employees; and by soliciting Greenaway to initiate a petition to have the Union decertified.

C. Section 8(a)(3)

Braniff had started to work for Campo in Houtzdale around 1969. She was union president and shop chairlady from around November 1975 until October 1978. During the latter part of her employment she was subject to several layoffs and discharge, to wit, she was discharged on January 13, 1977, but returned on February 5, as the result of a grievance; she was then laid off on April 1, 1977, and returned in August 1977; and then she was laid off in October 1977 and recalled on June 26, 1978, as part of an agreement settling a strike that occurred in May 1978.

Marie Greenaway started to work for Campo in April 1975. Toward the end of 1976, she became vice president of Local 727A. In Braniff's absences, Greenaway served as acting shop chairlady for the Union.

During 1975 and most of 1976, Campo was producing men's slacks. Originally Greenaway's work was sewing

pockets. However, apparently toward the end of 1976, the demand for men's slacks declined and the Company started to change to production of ladies' slacks. The production of men's slacks is somewhat more complicated than making women's slacks. A major difference in production of the two involves sewing the seams. On men's slacks, one operator sews inner seams and another operator sews outer seams; on women's slacks one operator sews both the inner and outer seams, the whole process being called "out-seam/in-seam."

When the conversion from men's to ladies' wear began, there were four employees engaged in sewing seams. These employees, with their dates of original hire, were: Elizabeth Zakutney, March 11, 1968;[11] Alberta Lamison, October 27, 1969; Sandra Bungo, May 9, 1972; Greenaway, April 2, 1975.

On January 3, 1978, a very cold day, the plant was unheated. Greenaway went to the office, from which she telephoned business agent Gatto. Gatto instructed her to have the employees continue working, if possible, and said he would call her back. Shortly thereafter the plant doors were locked so that the employees could not leave and none of them could enter the office portion of the building.

Later that day Greenaway was 'laid off." It appears that two or three of the other seam sewers were laid off at the same time. However, they were recalled within a very few days, whereas Greenaway was not then recalled.

About the middle of January, not having heard from Campolong but having heard rumors that she had been

---

[11] Zakutney's seniority may have been broken when she was on sick leave for an extended period. However, Greenaway conceded that for the purpose the issue here presented, Zakutney had more seniority than did Greenaway.

fired, Greenaway telephoned Campolong to ask if she "was fired or laid off or what was going on." According to Greenaway, Campolong said that she had been fired for the "poor quality of work" and should come into the plant to pick up her belongings.[12] Greenaway further testified that Campolong said that he would not interfere with her receiving unemployment compensation "as long as [she] didn't give him a hassle." Greenaway was out of work from January 3 until some time in June, when she was recalled as part of a general agreement settling a strike that occurred in May. However the three other employees sewing seams were laid off for a maximum of around 12 days between the beginning of January and the early part of April.

During Greenaway's "permanent layoff" three or four new employees were hired to do "serging." Only one of those new employees had had any experience. Campolong testified that the serging machines are somewhat more complicated that the sewing machines, but he conceded that Greenaway would have been competent to do serging. Campolong testified that Greenaway was not called to do serging because she was being held for recall as a sewer when needed. This explanation is totally incredible. First, Campolong never indicated that Greenaway's "permanent" layoff had been converted to "temporary." Second, he made no attempt to recall her until he was required to as part of a strike settlement. Third, he conceded that employees sometimes were transferred from job to job, so there is no apparent reason why Greenaway could not have been hired as a

---

[12] Her pretrial affidavit read: "[Campolong Jr.] said he could have fired me because of the quality of my work but he gave me a permanent layoff instead, but that if I give him any hassle he would stop me from signing up, so should I keep my mouth shut. When I picked up my stuff a few days later, Joe, Jr. told me not to give him any hassles."

serger and later transferred to sewing and when if she was needed. Finally, as discussed below, the collective-bargaining agreement calls for equalization of work among employees.

At the trial neither Joseph Campolong Jr., Respondent's only witness, nor Respondent's counsel in his opening statement or in cross-examining the General Counsel's witnesses indicated that Greenaway had been discharged or laid off because her work was poor. Respondent's *only* position concerning Greenaway's "layoff" was that she was chosen strictly by seniority when there was a slowdown in production. The evidence does not support Respondent's contention in any respect.

There is considerable confusion in the record concerning seniority. The collective-bargaining agreement provides:

> ARTICLE IX — EQUAL DIVISION OF WORK
>
> In the event the Employer should not have enough work to keep all his employees working full time, then such work as may be available shall be equally divided among the employees, as far as is practicable. In the event that it is necessary that an employee be laid off then said layoff is to be done in accord with the employees' seniority on their respective operations.

It seems to have been generally agreed at the present trial that "operations," as used in the contract, refers to particular jobs, e.g., in-seaming, out-seaming, or in-seaming/out-seaming. However, among the documents placed in evidence by the General Counsel is an arbitrator's award concerning the discharge of Bertha Kapsick, a cutting department employee. That award construes the quoted contractual language as basing seniority on "job classification" rather than on the particular opera-

tion performed by the employee.[13] In the present case, however, no reference was ever made to job titles or job classifications, and the wage schedules apparently attached to the collective-bargaining agreements were not put in evidence.

For a period of time, apparently through the first several months of 1978, Campo was producing both men's and women's slacks. Union business agent Gatto testified as follows concerning an agreement reached as to the method of assigning work during the changeover period:

> A problem did arise of who would be on the job of ladies and who would be on the job of men's and in order to stick to the collective bargaining agreement which states that a person has seniority on their own job, it was suggested at that time that we try to stick to the agreement as much as possible under the circumstances and the people with the more seniority, the most seniority on their own operations stay on the men's and the ones with the less seniority that were needed we put on women's.

Gatto's testimony that the more senior employees were left on production of men's slacks was corroborated

---

[13] The arbitrator's decision reads, in part:

> The question devolves to one of considering what was the job of grievant and [another employee]. The record makes clear that it was "general worker II." As part of that job, one can be a fitter or a sobar machine operator, but these functions are not separate job titles. . . .
>
> When the contract speaks of lay offs to be made according to operational seniority, the practice in industry is that lay offs will be first given to those with less seniority in the job title. One's operation is his job description and all included therein, not an assignment given for a certain time as part of that job. Thus in this case seniority as "general worker II" is the key, not how long an employee has been assigned to a mere part of her total duties.

by Greenaway and Campolong Jr. However, while corroborating Gatto's testimony at one point, Campolong Jr. inconsistently testified that, in order to avoid seniority problems, all the seam sewers were assigned to the same work on a day-to-day basis, i.e., they would all be shifted between men's and women's wear at the same time.

The agreement described by Gatto and Greenaway (and at one point by Campolong) appears somewhat strange, in that it would result in giving higher seniority to junior employees than to the more experienced employees if seniority was measured by "the employees' seniority on their respective operations." That result would follow from having the senior employees remain on production of men's slacks after junior employees were transferred to ladies' wear, which was to become the plant's only production.

Campolong's testimony was basically incredible. For example, he testified that Zakutney, Lamison and Bungo had all been hired before Greenaway and each of the three had always performed the out-seam/in-seam operation. But, as noted above, that combined operation was limited to ladies' slacks, while Campo had previously produced only men's slacks.

Greenaway's position was consistent with the evidence as a whole. She testified that, in accordance with the agreement described by Gatto, she, as a junior employee, was first transferred to production of ladies' slacks early, while the more experienced workers remained on production of men's wear, a more complicated and difficult process. On those facts, manifestly Greenaway would have seniority on the out-seam/in-seam operation.[14]

---

[14] Greenaway testified that Zakutney had first seniority because she "did out-seaming and in-seaming first." It was not explained how that squared with the agreement in view of the length of Zakutney's employment with Respondent.

In cross-examining Greenaway, Respondent's counsel appeared to be attempting to support Respondent's position on the basis of plant or job classification seniority, as follows:

> Q. How about Sandra Bungo, isn't it true that she was hired originally sometime in 1972?
>
> A. That's possible.
>
> Q. What made you believe that you had more seniority than someone who was hired originally sometime in 1972 when you were hired in 1975?
>
> A. When they had the changeover from men's wear to women's wear half the factory went men and half the facotry went women. If you did men's that was your job if you were first or whatever. If you did women's you—that was yours.
>
> Q. Isn't it true that Alberta Lamison was first hired by the company some time in 1969?
>
> A. I don't know. I don't know when Betty[15] was hired.
>
> Q. Isn't it true that she was a long-time employee? . . . Much longer than you?
>
> A. Yes.
>
> Q. What made you feel that you had more seniority than Alberta Lamison?
>
> A. Because I did women's wear before she started. I started women's wear before she was done with men's wear.
>
> Q. Isn't it true that all four of you were sewing machine operators?
>
> A. Yes, that's true.

---

[15] The reference to "Betty" was obviously an error. "Betty" is Zakutney's first name, while the context shows that Greenaway was talking about Lamison.

In cross-examining Gatto, Respondent's counsel posed hypothetical questions apparently designed to establish that the Union, in accordance with trade union practice generally, favored honoring plantwide seniority. Gato maintained that the hypothetical situations posited by counsel could be resolved only by negotiation between the Union and Respondent. While the applicability of the governing contractual provisions to some possible cases is not self-evident, it is clear that plantwide seniority is not controlling.[16]

As discussed below, in February and March 1978, during Greenaway's "permanent layoff," Respondent refused to accept mail from the Union. Additionally, Respondent denied access to its plants by representatives of the Union. Thus, during this period, the Union was denied the information it requested as necessary to handle grievances involving seniority rights. The information sought included, *inter alia*, dates of hire, job classifications and dates of employment in the employees' classifications. Respondent introduced records showing employees' dates of hire and attendance, but not containing any information whatsoever as to job classifications or specific operations performed.

Additionally, Respondent has not supported its present underlying position that Greenaway's layoff was an incident of a decline in business. Although Joseph Campolong Jr. conceded that production records existed, Respondent introduced none to support his conclusory statement that in January and early February 1978 production dropped from a normal of about 6,000 to 7,000 pairs of slacks in process to around 3,000 to 4,000 pairs. During Greenaway's layoff, four serges were

---

[16] In the Kapsick arbitration, Respondent's position was that seniority was based exclusively on the particular operation performed by an employee. However, the arbitrator adopted the Union's view that "job classification" was controlling.

hired, although previously there had been only two. Unexplained, these facts appear to be inconsistent with a decline in production. In any event, as quoted above, the contract called for equalization of available work among the employees to the extent practicable. At the trial, Respondent made no effort to establish that equalization was not practicable when Greenaway was laid off (or discharged), although Campolong disclosed that on several occasions in March and April the remaining three seam sewers were laid off simultaneously.

The evidence establishes that Respondent harbored considerable animosity against the Union, which the Campolongs believed was out to bankrupt Respondent. Campolong made clear his hostility to Gatto and Reale, to the point of denying them access to the plants, as provided in the contract. So far as appears, at the end of 1977 Greenaway was the only union officer currently working for Respondent. Her "permanent" layoff was in marked contrast to the sporadic brief layoffs of her coworkers. Shortly after Greenaway's "layoff," Respondent refused to have any dealings with the Union. Thus, it is clear that Respondent had antiunion animus and well knew of Greenaway's union sympathies and activities at the time of the layoff. Upon this showing of antiunion animus, knowledge of Greenaway's union activities and disparate treatment, it became incumbent on Respondent to rebut the General Counsel's *prima facie* case by establishing that the "permanent layoff" was occasioned by facts unrelated to the Union. This burden the Respondent failed to meet.

On the face of it, the collective-bargaining agreement did not permit, let alone require, Greenaway's layoff or discharge. The testimony of Respondent's only witness was so riddled with inconsistency as to have no probative value in explaining the layoff. And Respondent failed to produce any documentary evidence to justify its con-

duct. Indeed, the only documentary evidence introduced by Respondent showed, at most, relative plantwide seniority of the employees, with nothing remotely relevant to the controlling provision of the contract.

In view of Respondent's failure to establish any credible nondiscriminatory explanation of Greenaway's "permanent layoff," the inference is inescapable that it was a major step in Respondent's course of unlawful action designed to rid itself of the Union. The "layoff" therefore was violative of Section 8(a)(3) and (1) of the Act.

D. Section 8(a) (5)

1. The cutting department

As previously noted, the collective-bargaining agreement between Campo and the Union defined the bargaining unit as "all of the employees of the Employer wherever employed." From the beginning of their bargaining relationship, the parties had construed that definition as including the four or five cutters in Madera. This construction was manifested by the facts that there was a shop steward in the cutting department; union dues were checked off for the cutters; contributions were made on behalf of the cutters to the contractually provided insurance program; and at least one grievance concerning a cutting department employee (Bertha Kapsick) was processed through arbitration under the contract.

The cutting department occupied a large building. Across the road was a building containing offices, including the principal office of Joseph Campolong, Sr., and some 70 to 80 production workers. Although the record is murky as to this fact, it appears that these production workers were employed by JBC, Respondent presented no evidence to clarify the corporate setup. However, on cross-examination by Respondent's coun-

sel, union business agent Gatto testified to his understanding that JBC was the parent corporation, with Campo and J & E as subsidiaries. Gatto also testified that "the people in Campo Slacks 'til today still get paid from JBC." The JBC production employees have never been unionized.

Around November 1977 the JBC production workers were physically moved across the road, into the building housing the cutting department. It apparently is Respondent's position that when the JBC workers were moved to the building occupied by the cutting department, somehow the cutting department employees ceased being members of the Campo bargaining unit and were, in effect, merged with the unorganized JBC employees. Respondent apparently maintains that the change in the bargaining unit occurred as a matter of law. Respondent's original answer to the complaint had admitted that the cutting department workers in Madera were part of the Campo bargaining unit. Thereafter, through new counsel, the answer was amended to deny "that cutting department employees employed at Madera, Pennsylvania, constitute part of any appropriate unit." In the course of his opening statement at the trial, Respondent's present counsel discussed the amendment as follows:

> MR. WOICIK: . . . We take the position, with this amendment to the Answer, that the cutting department employees employed at Madera are not a part of any appropriate unit represented by the Union.
>
> JUDGE KLEIN: Have the parties treated the cutters as part of the unit at any time?
>
> MR. WOICIK: Not since that Answer was filed, Ma'am.
>
> JUDGE KLEIN: What about before that?

MR. WOICIK: There may have been a time before that. I believe in 1977 the cutting department was treated as part of the Houtzdale bargaining unit.

JUDGE KLEIN: . . . Did that contract that expired on September 2nd or thereabouts, 1979, did that cover the cutters?

MR. WOICIK: At an earlier time, I believe it did, Ma'am.

JUDGE KLEIN: When did it cease covering and what caused it to cease covering them?

MR. WOICIK: I won't pinpoint the date, Ma'am, because I can't. I think that's what will be a substantial issue.

* * *

The condition changed when this Employer transferred these three, four or five workers—I don't know exactly how many were employed who were pertinent to this question at that time, but he transferred them *to another company.*

JUDGE KLEIN: From what company to what company?

MR. WOICIK: *From Campo Slacks to a company called J B C Company.*

JUDGE KLEIN: Is that a newly organized company?

MR. WOICIK: A newly organized business for all purposes of this case. And had this group of four workers in working with what later turned out to be between 60 and 70 other workers in an un-unionized shop.

JUDGE KLEIN: Were they newly hired since this was a new company?

* * *

MR. WOICIK: I believe so. Some may have been, some may not have been. . . . I can't say that all of them were, Ma'am. Some may have turned out to be employees at the other three locations. As I said, we have four locations we're dealing with. . . . It seems to me that if an Employer had four locations, let's assume that three are unorganized by a union and one is, and he transfers . . . the four cutting room employees from the ûnionized location to the ununionized location;[17] their contract doesn't continue. . . . *[T]he union contract doesn't cover individuals, it covers work in a certain location and within the context of a bargaining unit.* When that bargaining unit changes and it's no longer the original bargaining unit and it's lost its identity, that contract doesn't go on.

JUDGE KLEIN: Not even to its own expiration?

MR. WOICIK: Not with regard to a different bargaining unit. A different location, no. [Emphasis supplied.]

In support of a motion to dismiss at the conclusion of the General Counsel's case, Respondent's counsel added a new contention, as follows:

The evidence shows that the cutting department employees on the basis of General Counsel's witness have not been employed by Campo Slacks. The contract which is in evidence runs between Campo Slacks and the union. The evidence shows on the

---

[17]It should be observed that counsel's argument hypothecates circumstances opposite to those in the present case. Here employees were moved from an "ununionized location" to a "unionized location"; i.e., the unorganized workers employed by JBC were moved to the location of the organized cutting department employees. If accepted, Respondent's hypothetical argument might well lead to the conclusion that, when they moved, the JBC employees who were an accretion to the Campo bargaining unit.

> basis of General Counsel's witnesses that the cutting department employees were employed by another company. That other company is not a party to this proceeding.

Counsel undoubtedly refers to the testimony of Larry W. Lecerf, who had been working in the cutting department in Madera for 5 years at the time of the trial. At the outset of his examination, he testified as follows:

> Q. (By Mr. Simpson) By whom are you employed?
>
> A. Joe Campolong, JBC Company.
>
> Q. How long have you worked for the Campolong Company?
>
> A. Since May 27, 1957.

The examination of Lecerf then turned to whether there had been any change of employer later in 1977. His testimony was:

> Q. . . . [A]s far as who you were employed by, who signed your checks and where the checks came from. Was there any change?
>
> A. No.
>
> Q. Has your Employer, as far as you now, changed the name of your Employer during all the five years that you've worked there?
>
> A. No, not since the five years I worked there, no. It's always been JBC in the last five years.

The General Counsel then introduced documentary evidence showing that JBC had paid Lecerf's wages in the years 1976 through 1979, i.e., both before and after November 1977, when Respondent maintains the cutting department employees were eliminated from the Campo bargaining unit.

Lecerf also testified that he was a member of Local 727A of the Union, which represented the employees covered by the Campo contract. He further testified that union dues had been deducted from his pay and he was covered by the Union's hospitalization plan and insurance payments were made on his behalf. The General Counsel then introduced Union records showing that after October 1977 no dues were received from the cutting room employees. Lecerf also credibly testified that around that time Campolong demanded that he sign a document for insurance coverage by Aetna in place of the "union insurance plan" by which he had previously been covered. He also testified, with no contradiction, that his work had not changed in any respect when the JBC employees moved into the building where the cutting department was working.

Lecerf's testimony and the documentary evidence, standing alone, might superficially appear to bear out Respondent's contention that the cutters were employees of JBC. However, such evidence does not stand alone. So far as here relevant, the apparent source of wage payments is not decisive. The undisputed fact, confirmed by Respondent's counsel, is that, since the advent of the Union around 1969, the parties had been in agreement that the cutters stationed in Madera were included within the bargaining unit covered by the Campo collective-bargaining agreement. And Gatto's testimony that Campo employees are still being paid by JBC was uncontradicted. Thus, the source of payment and the identity of JBC as the "employer" for tax purposes do not establish that the cutters were not members of the bargaining unit covered by the Campo collective-bargaining agreement.

Respondent's contention that the cutting department employees were not employed by Campo is obviously an

afterthought suggested by Lecerf's inexact testimony.[18] Lecerf's testimony that he was "employed" by JBC cannot override the concessions made by Respondent's counsel. Lecerf is not legally trained and obviously not knowledgeable in labor relations law. His testimony shows that in fact he believed he was employed by Campolong, with the identity of any specific corporation having no major significance. The parties have by their conduct agreed that for the purposes of collective bargaining Campo was the "employer" of the cutters in Madera. Cf. e.g., *San Jose Mercury and San Jose News*, 197 NLRB 213 (1972). Otherwise stated, by its conduct in including the cutters within the coverage of the Campo collective-bargaining agreement, Respondent is estopped to deny that Campo is the responsible employer of the Madera cutting department.

If it were to be held that JBC became an employer by the one fact that the employees were paid by checks drawn by JBC, it would not relieve Campo of responsibility as an employer also. Campo would be responsible at least as a joint employer and a party to the collective-bargaining agreement.

Respondent presented no evidence of any change in the employment status of the cutting department employees when the JBC employees moved into the same building. And Respondent adduces no authority or rationale for concluding that the cutting room employees were removed from the Campo bargaining unit by the mere fact that JBC employees came to work on the same premises. Significantly, Respondent introduced no evidence concerning the supervision of the two groups of employees. In the absence of contrary evidence, it must

---

[18]Unfortunately, Lecerf's equating the source of his pay to his "employer" was induced by the wording of the General Counsel's questions.

be assumed that there was no change in supervision, particularly in the light of Lecerf's testimony that there were no changes in his work.

In his brief, the General Counsel suggests that if Respondent in good faith actually believed that the composition of the Campo bargaining unit had changed, it should have filed a petition for unit clarification. That, of course, would have been possible. The Board normally will not entertain a unit clarification petition early in the term of a contract. See *Wallace-Murray Corporation, Schwitzer Division,* 192 NLRB 1090 (1971); *Arthur C. Logan Memorial Hospital,* 231 NLRB 778 (1977); *San Jose Mercury et al., supra,* 197 NLRB 213. The Board has recently reaffirmed its view that unit clarification petitions will not be entertained during the early part of contract terms because "they would be disruptive of voluntarily continued bargaining relationships." *Shop Rite Foods, Inc.,* 247 NLRB 143, slip op. p. 3. It is not clear whether the Board might apply a different rule where the petitioner claims that changed circumstances require a change in the definition of the bargaining unit. Cf. *San Jose Mercury,* 200 NLRB 105 (1972). Whether or not the Board would have entertained a unit clarification petition based on Respondent's claim of changed circumstances, Respondent certainly was not at liberty to change the bargaining unit unilaterally. Such conduct would be in contravention of Section 8(d) of the Act.

On the foregoing considerations, I find that the cutting room employees were part of the Campo bargaining unit at all times material herein. Accordingly, Respondent violated Section 8(a)(5) and (1) of the Act when it withdrew recognition of the Union as the bargaining agent of the cutting room employees and stopped honoring the Campo collective-bargaining agreement with respect to those employees. Specifically, the discontinu-

ance of union dues checkoff and the purported change in insurance coverage were violative of the Act.

2. Denial of Access

Union representatives Gatto and Reale both testified that in January and March 1978 they were denied access to any of Respondent's plants. Greenaway also quoted Campolong Jr. as having said he did not want Gatto and Reale in the plants and that Campolong Sr. "would like to get rid of them." None of this testimony was denied and is credited.

The collective-bargaining agreements covering J & E and Campo both provide:

> The duly authorized officer or representative of the Union shall have the right to visit the shop of the Employer at all reasonable hours for the purpose of ascertaining whether the provisions of this agreement are being fully complied with. . . .[19]

So far as appears, before January 1978 the union representatives were freely permitted to visit Respondent's premises. With this practice established, Respondent's withdrawal of the right to access constituted a refusal to bargain violative of Section 8(a)(5) and (1) of the Act. See *R. C. Cobb, Inc.*, 231 NLRB 99, 104 (1977).

Although Respondent has not stated any specific defense to this allegation, its original answer to the complaint said that "the Board is without jurisdiction in regard to any of [the Section 8(a)(5)] averments as the collective-bargaining agreement provides for compulsory arbitration and the Union's right, if any, would be

---

[19]There follows the caveat: "[B]ut the right hereby granted shall be so exercised as to avoid any interruption of the work in said shops." Respondent does not suggest that Gatto or Reale violated this restriction.

under Section 301 of the Act." But it is clear that proceedings before the Board, arbitration, and judicial proceedings for breaches of contract are not mutually exclusive. *Vaca v. Sipes*, 385 U.S. 895 (1967). It has specifically been held that an employer's refusal to grant union representatives access to the work premises, as provided in a collective-bargaining agreement, is violative of the Act. *Harvey's Resort Hotel*, 236 NLRB 1670, 1680 (1978).[20]

3. Refusal to provide information or consider grievances

After Respondent denied Gatto and Reale access to its premises, they necessarily resorted to written communication. Under date of February 14, 1978, Gatto wrote to Respondent requesting specific information relevant to layoffs and insurance coverage in Campo and J & E. As stated in the letter of request, the information sought was relevant and necessary to the Union's ability to "enforce [its] collective-bargaining agreement and process any grievances which may arise thereunder." Gatto's letter ended with the statement that unless a reply was received within 5 days, he would "be forced to consider [Campolong's] silence a refusal to comply with [Gatto's] request." The letter was addressed to "Mr. Joseph Campolong, J.B.C. Co." and copies were sent by certified mail to Campolong at JBC in Madera, at J & E in

---

[20]In *Harvey's Resort Hotel* the denial of access was held to violate Section 8(a)(1), with no specific finding made under Section 8(a)(5). It appears clear that denial of access is substantially the same as refusal to provide relevant information upon request. Since the refusal to honor a union's request for relevant information constitutes a refusal to bargain in violation of Section 8(a)(5), I reach the same conclusion as to the denial of access to the plants. In any event, any such distinction would have little, if any, practical effect, since the remedial order to be recommended is the same whichever subsection of Section 7 is violated.

Clearfield, and at Campo in Houtzdale. All three copies were returned to Gatto, having been refused by the addressee. Another copy was sent by regular mail to Respondent's counsel. That letter was not returned to the sender. However, no reply was ever made.

Under date of March 20, 1978, Gatto sent seven grievances to Campolong. As he had done in February, he sent copies by certified mail to Campolong at Campo in Houtzdale, at J & E in Clearfield, and at JBC in Madera. Again all three copies were returned, "unclaimed." So far as appears, no copy of that communication was sent to Respondent's counsel. The grievances concerned four layoffs, discharges and/or refusals to recall employees at Campo and J & E; refusal to check off union dues of the cutting department employees; unilateral change in insurance benefits of the cutting department; and the method of converting production from men's to ladies' wear by both corporations. The documentary evidence is clear and Respondent presented no evidence in contradiction or explanation of its refusal to accept communications by the Union.[21]

Respondent has not indicated the nature of its defense, if any, to the allegation that it refused to process grievances. One might conjecture that Respondent would contend that Gatto's letter relieved Respondent of any obligation until the Union initiated arbitration. Such claim might conceivably be based on the conclusion of Gatto's covering letter, which reads:

---

[21] In its original answer to the complaint, Respondent said that "in fact as recently as April 5, 1978, the Company participated in grievance procedures under the Collective Bargaining Agreement." The reference apparently is to the arbitration of the Kaspick grievance, which was heard on April 5, 1978, with briefs filed thereafter by both the Union and the Company. Since Kapsick was laid off in July 1977, the grievance undoubtedly was in process before Respondent broke off communications. In any event, the arbitration of one grievance is no defense to a failure to receive and act on other grievances.

> Please contact me at my office with your response to these grievances. If you do not respond, you are to assume that the grievances enclosed are advanced to the appropriate step. We will serve you with a notice to arbitrate once sufficient time has elapsed for all steps to have been theoretically or actually processed.

Instead of taking the grievances to arbitration the Union filed charges with the Board. Having refused to accept Gatto's communication, Respondent is hardly in any position to rely on its contents. Respondent rejected the communications at its peril and cannot rely on self-induced ignorance.

The collective-bargaining agreements set forth the steps in the grievance procedure and contained mandatory requirements for Respondent's action at each step. Respondent obviously cannot escape its obligations under the grievance procedure by the simple expedient of refusing to accept mail from the Union.

And there is nothing in the agreements or in the Act which would require the Union to proceed to arbitration or forfeit the employees' right of recourse to the Board. Whatever the present scope of the Board's *Collyer* rule,[22] manifestly the Union is not required to pursue a procedure which Respondent has repudiated. The Union had asserted its statutory right to information necessary for the processing of grievances. That right is properly vindicated in a Board proceeding. See *International Harvester Company*, 241 NLRB No. 94 (1979); *St. Joseph's Hospital*, 233 NLRB 1116, 1119 (1977).

On the undisputed evidence, I find and conclude that, as alleged in the complaint, Respondent violated Section 8(a)(5) and (1) of the Act by refusing to receive and

---

[22]*Collyer Insulated Wire*, 192 NLRB 837 (1971).

process grievances filed pursuant to the governing collective-bargaining agreements and by refusing to receive and honor the Union's requests for information relevant to its proper administration and enforcement of the agreements.

Conclusions of Law

1. Campo Slacks, Inc., and J & E Sportswear, Inc., are individually and jointly employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by threatening to close its plants if its employees seek continuing representation by the Union; by threatening to take unilateral action in derogation of its obligation to recognize and bargain with the Union as the duly authorized bargaining representative of Respondent's employees in appropriate units; by threatening to withdraw recognition of the Union as the collective-bargaining representative of Respondent's employees; by threatening an employee with denial of unemployment compensation benefits if she continues to assert her rights protected by Section 7 of the Act; and by soliciting an employee to initiate a petition to have the Union decertified as the duly authorized bargaining representative of Respondent's employees appropriate units.

4. Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act by discharging or "permanently laying off" employee Marie Greenaway on January 3, 1978, and thereafter failing to recall her for a substantial period of time.

5. Respondent has engaged in unfair labor practices within the purview of Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Union as the bargaining representative of Respondent's employees in its cutting department in Madera, Pennsylvania; by denying union representatives access to Respondent's plants in Clearfield, Houtzdale and Madera, Pennsylvania; by refusing to accept communications from the Union; by failing to process grievances as required by its collective-bargaining agreements with the Union; by failing and refusing to honor the Union's requests for relevant information necessary for administration and enforcement of the collective-bargaining agreements between Respondent and the Union; by unilaterally changing insurance benefits for the employees in Respondent's cutting department in Madera, Pennsylvania; and by failing and refusing to check off union dues of employees in Respondent's cutting department, as required by the collective-bargaining agreements.

The Remedy

Since it has been found that Respondent has committed unfair labor practices, it will be recommended that Respondent be ordered to cease and desist therefrom and take certain action necessary to effectuate the purposes of the Act.

Citing *Ohio Power Company,* 215 NLRB 165 (1974) and *Brad's Machine Products Inc.,* 191 NLRB 274 (1971), the General Counsel requests that a broad cease-and-desist order be issued. The cited cases involved discriminatory discharges in violation of Section 8(a)(3) and were decided when the Board's practice was uniformly to issue broad orders in such cases. However, in *Hickmott Foods, Inc.,* 242 NLRB No. 177 (1979), the Board abandoned its prior view that discriminatory discharges necessarily call for broad cease-and-desist or-

ders. So far as appears, the present Respondent had been dealing with the Union for some 7 years without incident before the events here involved. The most recent unfair labor practices alleged in the present case occurred about 2 years ago. Greenaway has been reinstated and the parties apparently resolved their differences in a strike settlement reached around May of 1978. While Respondent did commit serious violations of Section 8(a)(1), (3) and (5), it appears that a large part of the difficulty arose out of a clash of personalities between the Campolongs and the union representatives. Gatto and Reale have since been replaced and relations between the parties appear to have improved. The record then does not establish a proclivity on Respondent's part to violate the Act. Under all the circumstances, I conclude that a broad cease-and-desist order is not called for in this case.

Although it appears that Marie Greenaway was reinstated after the strike of May 1979, the record does not affirmatively establish that the reinstatement was complete, i.e., that she was restored to her former position without prejudice to her seniority and other rights and privileges. Accordingly, it will be recommended that, to the extent it has not already done so, Respondent be required to offer Marie Greenaway immediate and full reinstatement to her former job (or, if such position no longer exists, to a substantially equivalent job) without prejudice to her seniority or other rights and privileges, and to make her whole for any loss she may have suffered by reason of her layoff and/or discharge on January 3, 1978, such compensation to be computed in accordance with *F.W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977).[23]

---

[23]See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Respondent will also be required to make the Union and/or the employees whole for any losses suffered by reason of the Respondent's failure or refusal to check off union dues and make payments to insurance and benefit funds as provided in the collective-bargaining agreements which expired on September 2, 1979.

Upon the basis of the foregoing findings of fact, conclusions of law and the entire record, and in accordance with Section 10(c) of the Act, I hereby issue the following recommended:[24]

ORDER

Respondents, Campo Slacks, Inc., and J & E Sportswear, Inc., their officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with plant closure because of their union sympathies and activities.

(b) Threatening to withdraw and/or withhold recognition from Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC, as the duly authorized collective-bargaining representative of Respondent's production and maintenance workers in Houtzdale, Madera and Clearfield, Pennsylvania.

(c) Threatening employees with deprivation of unemployment compensation benefits because of their union activities.

---

[24]In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) Soliciting employees to initiate and circulate a petition to decertify the above-named Union as the collective-bargaining agent of Respondent's employees.

(e) Laying off and/or discharging any employees for engaging in union activities and to discourage union membership.

(f) Failing and refusing to recognize and bargain with the aforenamed Union as the representative of Respondents' employees in the following appropriate bargaining units:

> All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees at its Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act;
>
> and
>
> All employees by J & E Sportswear, Inc., at its Clearfield, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

(g) Failing and refusing, on request, to provide the Union with information relevant and necessary to enable the Union to perform its obligations as bargaining representative of the employees in the bargaining units described above.

(h) Failing or refusing to permit union representatives to visit Respondent's facilities at reasonable times to make observations and investigations necessary to meet their obligations to represent the employees in bargaining units described above.

(i) Failing and refusing to check-off and transmit dues to the Union on behalf of the employees in the cutting department in Madera, Pennsylvania, to the extent required under the collective-bargaining agreement of Campo Slacks, Inc.

(j) Failing and refusing to make payments on behalf of the employees of the cutting department in Madera, Pennsylvania, pursuant to Agreements and Declarations of Trust as provided in the collective-bargaining agreement of Campo Slacks, Inc.

(k) Unilaterally discontinuing contributions to insurance and similar trust funds as provided in the governing collective-bargaining agreements, and unilaterally instituting any new insurance or similar plan or program.

(l) Laying off, discharging or otherwise terminating any employees for supporting the aforenamed Union.

(m) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) To the extent that Respondents have not already done so, offer Marie Greenaway immediate and full reinstatement to her former position (or, if such position no longer exists, to a substantially equivalent job), without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings suffered by her as a result of her layoff or termination on January 3, 1978, in the matter set forth in the section herein entitled "The Remedy," said backpay to be a joint and several liability of the two respondent corporations.

(b) Preserve and make available to the Board or any of its agents, upon request, all records necessary to analyze the amount of backpay due under the terms hereof.

(c) Recognize and, upon request, bargain with the aforenamed Union as the representative of Respondents' employees in the two bargaining units described above.

(d) Upon request, furnish to the aforenamed Union relevant information necessary to enable the Union to perform its obligation as bargaining representative of the employees in the bargaining units described above.

(e) Grant to representatives of the above-named Union reasonable access to Respondents' facilities for the purposes of observation and investigation as necessary to enable the Union properly to represent the employees in the above-described bargaining units.

(f) Compensate the above-named Union for union dues which Campo Slacks, Inc., failed to checkoff and transmit to the Union on behalf of employees of the cutting department in Madera, Pennsylvania, as required under the Campo Slacks, Inc., collective-bargaining agreement that expired on September 2, 1979.

(g) Make the employees of the cutting department in Madera, Pennsylvania, whole by paying all insurance and similar contributions as required by the Campo Slacks, Inc., bargaining agreement that expired on September 2, 1979, to the extent that such contributions have not been made or that the employees have not otherwise been made whole for their ensuing expenses; provided that Respondent is not required to rescind or cancel any substitute or

new insurance program or plan it may have instituted, unless the Union so requests.

(h) Post at its offices and places of business in Houtzdale, Madera and Clearfield, Pennsylvania, copies of the attached notice marked "Appendix."[25] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative(s), shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondents shall take reasonable steps to assure that said notices are not altered, defaced or covered by any other material.

(i) Notify the Regional Director for Region 6, in writing, within 20 days of this Order, what steps Respondents have taken to comply herewith.

Dated, Washington, D.C. March 13, 1980

Josephine H. Klein
Administrative Law Judge

[25]In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

AFTER A TRIAL IN WHICH ALL PARTIES HAD A CHANCE TO GIVE EVIDENCE, IT HAS BEEN FOUND THAT WE, CAMPO SLACKS, INC., AND J & E SPORTSWEAR, INC., HAVE VIOLATED THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, AND WE HAVE BEEN ORDERED TO POST THIS NOTICE AND TO ABIDE BY THE FOLLOWING:

WE WILL NOT threaten to close any plant or facility because our employees engage in union activities or continue to choose to continue being represented by AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC.

WE WILL NOT threaten that we will refuse to recognize AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC, or take unilateral action concerning wages, hours or other terms and conditions of employment without bargaining with the Union named above.

WE WILL NOT threaten employees with loss of unemployment compensation if they continue to support the above-named Union or engage in union activities.

WE WILL NOT solicit any employees to initiate or sponsor a decertification petition aimed at removing the Union as collective-bargaining agent of our employees in the following appropriate bargaining units:

All employees employed by Campo Slacks, Inc., at its Houtzdale, Pennsylvania, facility, and all cutting department employees at our Madera, Pennsylvania, facility; excluding office clerical employees, executives, administrative

employees and guards, professional employees and supervisors as defined in the Act;

and

All employees employed by J & E Sportswear, Inc., at our Clearfield, Pennsylvania, facility; excluding office clerical employees, executives, administrative employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, coerce or restrain our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive collective-bargaining representative of the employees in the bargaining units described above.

WE WILL comply with requests for information needed by the Union in order fully and properly to protect and further the interests of the employees in the bargaining units described above and to negotiate and thereafter administer and enforce collective-bargaining agreements on behalf of the employees.

WE WILL compensate the Union and/or the employees in our cutting department in Madera, Pennsylvania, for any loss they may have suffered by our failure to abide by the provisions in our collective-bargaining agreement covering insurance and similar benefits and the checkoff of Union dues required under that agreement.

WE WILL offer Marie Greenaway full reinstatement to her former job (or, if that job no longer exists, to a substantially equivalent position), without prejudive to her seniority and other rights and privileges; and WE WILL compensate Marie

Greenaway for any loss she has suffered because of her discharge or layoff on January 3, 1978, with interest.

ALL OUR EMPLOYEES ARE FREE TO BECOME AND REMAIN, OR TO REFRAIN FROM BECOMING OR REMAINING, MEMBERS OF AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO-CLC, OR ANY OTHER LABOR ORGANIZATION, EXCEPT TO THE EXTENT THAT SUCH RIGHT MAY BE AFFECTED BY AN AGREEMENT REQUIRING UNION MEMBERSHIP, AS AUTHORIZED BY THE PROVISO IN SECTION 8(a)(3) OF THE ACT.

CAMPO SLACKS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

J & E SPORTSWEAR, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

Opposition

Office - Supreme Court, U.S.
FILED
SEP 17 1981
ALEXANDER L. STEVAS

No. 81-304

In the Supreme Court of the United States

OCTOBER TERM, 1980

CAMPO SLACKS, INC., AND J & E SPORTSWEAR, INC.,
PETITIONERS
v.
NATIONAL LABOR RELATIONS BOARD AND AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

WILLIAM A. LUBBERS
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Acting Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

PENNY PILZER
Attorney
National Labor Relations Board
Washington, D.C. 20570

QUESTION PRESENTED

Whether the Board properly found that petitioners violated Section 8(a)(1) of the National Labor Relations Act when they threatened to close their plant and to take unilateral action in derogation of the Union if the Union continued to press petitioners to comply with the collective bargaining agreement.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statute involved 1

Statement 2

Argument 4

Conclusion 7

TABLE OF AUTHORITIES

Cases:

Korn Industries, Inc. v. *NLRB*, 389 F. 2d 117 ..... 5, 6

NLRB v. *Clinton Packing Co.*, 468 F. 2d 953 5

NLRB v. *Frontier Homes Corp.*, 371 F. 2d 974 ..... 5, 6

NLRB v. *Gissel Packing Co.*, 395 U.S. 575 5

Statute:

National Labor Relations Act, 29 U.S.C. 151 *et seq.* 1

Section 8(a)(1), 29 U.S.C. 158(a)(1) 3, 4, 5, 6

Section 8(a)(3), 29 U.S.C. 158(a)(3) 4

Section 8(a)(5), 29 U.S.C. 158(a)(5) 4

Section 8(c), 29 U.S.C. 158(c) 4, 5

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 81-304

CAMPO SLACKS, INC., AND J & E SPORTSWEAR, INC.,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD AND AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. A-1 to A-4) is not officially reported. The decision and order of the Board (Pet. App. A-5 to A-51) are reported at 250 N.L.R.B. 420.

JURISDICTION

The judgment of the court of appeals was entered on May 27, 1981. The petition for a writ of certiorari was filed on August 14, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.* are set forth at Pet. 2-4.

STATEMENT

Petitioners are joint employers engaged in the manufacture and non-retail sale of clothing (Pet. App. A-13).[1] In the late summer and early fall of 1977, representatives of the Union[2] and petitioner Campo Slacks met to discuss insurance payments and wage rates. Campo had been delinquent in its contributions to the collective-bargaining contract's employee health insurance fund, and its employees were therefore having difficulty collecting from the insurer for hospital expenses. In addition, adjustments in the wage scales, which were based on production, became necessary when Campo decided to change its production from men's wear to women's wear. However, Campo and the Union disagreed about the base from which the wage increase should be computed after the changeover (*id.* at A-15 to A-16). In one meeting, Campolong, Jr., told union officers and plant employees Grace Braniff, Joan Lightner, Marie Greenaway, Harry Hewitt, Carl Dobish, and Nancy Reifer, that the employees were "trying to run him out of business and bankrupt him," and that employees would have to "give [his proposals concerning insurance and wages] a twirl" or he would "close the plant down" (*id.* at A-16; A. 196-197).[3] Campolong, Jr., made a similar statement to Grace Braniff, who was then the union chairlady and shop steward (Pet. App. A-16; A. 198-199). At one point, Campolong, Jr., also told employee Greenaway " 'that his dad was going to like close the plant over the hassle from the girls over the insurance,' " and that " 'his dad would do what he wanted to

---

[1]Both companies are owned by Joseph Campolong, Sr., who is also president of both companies. Joseph Campolong, Jr., is vice president of both companies and plant manager of Campo Slacks (Pet. App. A-14).

[2]Amalgamated Clothing and Textile Workers Union, AFL-CIO-CLC.

[3]"A." refers to the appendix in the court of appeals.

about the union, whether the union liked it or not' " (Pet. App. A-15, A-17; A. 150, 186). Finally, when the Union refused to accede to the Company's demands regarding insurance and wage rates at a meeting on September 6, 1977, Campolong, Sr., presented a previously prepared letter, which read in part (Pet. App. A-17):

> For the past twelve months, Campo has suffered great losses. Now your demands for pension contributions, and increased hourly rates that [*sic*] will increase our losses. Competition will not allow us these increases. It is the decision of the Board of Directors of Campo that thirty days from this date Campo will cease doing business.

No information was offered to buttress Campo's claim of financial difficulties, and it never carried out its purported decision to cease doing business.

The administrative law judge, whose decision was affirmed by the Board (Pet. App. A-5 to A-7), found that petitioners threatened to close the plant in order "to discourage support of the Union and to avoid having to deal with it * * *" (*id.* at A-17). The law judge further found that Campolong, Jr.'s threat that " 'his dad would do what he wanted to about the union, whether the union liked it or not' " was "an unlawful threat to take unilateral action in derogation of [petitioners'] obligation to bargain with the Union" (*ibid.*). The judge concluded (*id.* at A-20) that petitioners violated Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. 158(a)(1), by threatening to close their plants because of the employees' union activities and by threatening to take unilateral action in derogation of petitioners' duty to recognize and bargain with the Union.[4]

---

[4]In addition, the law judge concluded that petitioners violated Section 8(a)(1) by soliciting employee Greenaway to initiate a union decertification petition and by threatening to deprive Greenaway of unemployment compensation because of her union activities (Pet. App.

The court of appeals enforced the Board's order (Pet. App. A-1 to A-4), rejecting petitioners' contention that the statements found by the Board to be violative of Section 8(a)(1) of the Act were protected under Section 8(c) of the Act (Pet. App. A-3).

ARGUMENT

Petitioners contend that their threats to close the plant and to act unilaterally in derogation of the Union were protected under Section 8(c) of the Act[5] because they were made during bargaining negotiations. There is no merit to this contention.

In the first place, contrary to petitioners' assertions (Pet. i, 6-8), not all of the remarks at issue were made at the bargaining table. As shown above (pages 2-3, *supra*), Campolong, Jr.'s statements to employee Greenaway that his "dad" was going to close the plant and "do what he wanted"

A-20). The judge also concluded that petitioners violated Section 8(a)(3) and (1) of the Act by discharging or laying off Greenaway because of her union activities (Pet. App. A-29), and that petitioners violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Union as representative of the cutting department employees; by failing to check off and transmit union dues from the cutting department employees' paychecks; by unilaterally changing and failing to contribute to the cutting department employees' insurance and other benefit programs; by refusing to grant union representatives access to plant facilities; by refusing to accept delivery of grievances that the Union attempted to file; and by refusing to furnish the Union information relevant to the processing of grievances (Pet. App. A-36 to A-41).

Petitioners here challenge only the findings that they unlawfully threatened to close the plant and to take unilateral action in derogation of the Union.

[5]Section 8(c) of the Act, 29 U.S.C. 158(c), provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of the Act, if such expression contains no threat of reprisal or force or promise of benefit.

were not made in the context of bargaining negotiations (A. 150, 185-186). Moreover, even the remarks made to the bargaining committee were made to a group composed mainly of employees, not professional union agents.

In any event, the Act does not preclude the Board from finding that threats made in the course of bargaining negotiations are unlawfully coercive. By its terms, Section 8(c) specifically excepts from its ambit employer threats. And, as this Court has made clear, statements that an employer intends to close its plant are privileged only when they are "carefully phrased on the basis of objective fact." *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575, 618 (1969). Thus, whether or not statements are coercive within the meaning of Section 8(a)(1) depends upon a careful examination of the context in which they were made. Although statements which would be coercive in one setting (*e.g.*, during a unionization campaign) may not be so when made in the course of bargaining negotiations, coercive threats to close a business if the Union continues to press grievances or contractual demands are not beyond the Board's scrutiny merely because they occur in the course of negotiations. See *NLRB* v. *Clinton Packing Co.*, 468 F. 2d 953, 955-956 (8th Cir. 1972).

Neither *NLRB* v. *Frontier Homes Corp.*, 371 F. 2d 974, 976-978 (8th Cir. 1967), nor *Korn Industries, Inc.* v. *NLRB*, 389 F. 2d 117, 123 (4th Cir. 1967), upon which petitioners rely (Pet. 11-12), supports petitioners' argument that the Board may never scrutinize employer threats made in the course of negotiations in order to determine whether they violate Section 8(a)(1) of the Act. In any event, those cases are factually distinguishable from the instant case. In *Frontier Homes*, the remarks at issue were ambiguous, isolated and made during a negotiating session to non-employee union officials. In addition, the court emphasized that the employer and the union had enjoyed a history of

good relations. 371 F. 2d at 977-978. By contrast, in the instant case, petitioners' statements were unequivocal and repeated, and were made both during negotiations attended by employees and outside the negotiation setting to individual employees. Moreover, as the multiple violations found by the Board and enforced by the court of appeals indicate, the Union and petitioners had not enjoyed good relations in other respects. Similarly, in *Korn Industries*, the court of appeals held only that an "isolated statement" made to union negotiators in the "heat of argument" did not amount to coercive conduct in violation of Section 8(a)(1) of the Act. 389 F. 2d at 123. In the instant case, petitioners' threats were not spontaneous outbursts made in the heat of argument. Threats to close or to take unilateral action were repeated a number of times, on different occasions (one such occasion being in a letter prepared prior to a negotiation session). The law judge found that these statements were made not in an effort to persuade the Union of the seriousness of petitioners' economic problems, but rather to "discourage support of the Union and to avoid having to deal with it" (Pet. App. A-17). In these circumstances, the Board was plainly entitled to find that petitioners' remarks were unlawfully coercive.[6]

---

[6]Contrary to petitioners' contention (Pet. 8-10), the Board's other unfair labor practice findings do not involve conduct which would be "innocuous" in the absence of evidence of "animus" based on the conversations involved here. The only mention of these conversations during the administrative law judge's discussion of the additional unfair labor practices was in connection with the discharge of Greenaway (Pet. App. A-28). In that discussion, the law judge relied on several other factors to find "animus" in addition to Campolong's statement, made in the course of bargaining, that the Union was out to bankrupt him.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

WILLIAM A. LUBBERS
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Acting Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

PENNY PILZER
Attorney
National Labor Relations Board

SEPTEMBER 1981

DOJ-1981-09